

FEB 24 2000

PATRICK FISHER
Clerk

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,
vs.

LISA DENNY DEMEREE,

Defendant - Appellant.

No. 99-5007
(D.C. No. 96-CR-151-H)
(N.D. Okla.)

ORDER AND JUDGMENT*

Before BRORBY, KELLY, and MURPHY, Circuit Judges.**

Lisa Denny Demeree, an inmate appearing pro se, appeals from the denial of her motions to stay: (1) the payment of fines during her direct appeal; and (2) the destruction and distribution of all items taken under search warrants in her case. R. docs. 279, 280. The district court ordered Ms. Demeree to submit a supplemental brief stating the special circumstances which would justify a stay of

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

** After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1 (G). The cause is therefore ordered submitted without oral argument.

the payment of fines. The court denied the motion for a stay of the destruction of items based on the government's assertion that (a) all documents had been turned over to Ms. Demeree and (b) the government would maintain all the items during the pendency of the direct appeal. App. Ex. D. Ms. Demeree failed to timely file supplemental briefs and the district court denied her motion to stay the payment of fines. R. doc. 302. This appeal followed.

This court subsequently entered an order and judgment affirming Ms. Demeree's conviction on direct appeal. United States v. Demeree, Nos. 97-5211, 97-5212, 1999 WL 92262 (10th Cir. Feb. 24, 1999). That decision renders Ms. Demeree's current appeal moot because the motions she brought only requested a stay during the pendency of her direct appeal. See Phelps v. Hamilton, 122 F.3d 1309, 1326 (10th Cir. 1997) ("[I]f an event occurs while a case is pending on appeal that makes it impossible for the court to grant any effectual relief whatever to a prevailing party, the appeal must be dismissed.") (citation and internal quotations omitted).

Ms. Demeree asserts that her appeal is not moot because the government has failed to produce relevant documents and property which are necessary for a habeas corpus motion. She requests an order to the United States Attorney to produce these items. This request should be made to the district court and is not properly raised for the first time on appeal.

Appeal DISMISSED.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge